MONTANA LEGISLATIVE HISTORY

Chapter 345 1969

Bill H 450 S _____ Original bill & history ____C

H. Committee on Fish & Game			S. Committee on Agriculture & Irrigation		
Hearing Date(s)	Feb 05	✓ C	Hearing Date(s)	Feb 25	✓ C
	Feb 07	✓ C		_____	____C
	_____	____C		_____	____C
	_____	____C		_____	____C
Date Out	_____	____C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

February 5, 1969

The meeting of the Fish and Game Committee was called to order at 10:35 by Chairman Bill Williams with 12 members present.

HB 336 was explained by its sponsor, Rep. Spilde. He stated that the title and the bill should be amended to say any rifle or rifles and any shotgun or shotguns. Rep. White asked if ammunition could be bought in other states and he was told that he could.

HJR 34 was explained by its sponsor, Rep. Bardanouve. Sen. Bertsche and Ashley Roberts of the Fish and Game Commission also spoke in support of the measure.

Rep. Kvaalen: How many state parks were created in the last legislature?
Bardanouve: Not enough!

Rep. Kvaalen: How far from Great Falls is Giant Springs?
Bardanouve: About three miles on the southside of the Missouri River.

Rep. Kvaalen: Is there any possibility that the city of Great Falls could have a city park there?
Bardanouve: They do now, but they don't have the funds to develop it properly.

Rep. Bardanouve then explained HJR 30 to the committee. Ashley Roberts of the Fish and Game Commission spoke in support of the measure, and stated that this area is now a state monument but is not as well known as the Big Hole area. They purchased 160 acres from the Bureau of Land Management in July of 1959 to create this park.

Rep. Knudsen, sponsor of HB 547, explained the bill to the committee members.

Rep. White: Does a game warden have authority in counties other than his own?
Mr. Dunkle: Yes, but the money would be returned to the county in which the crime was committed.

Rep. Hageman: Does the JP hold anything out of the fine now?
Mr. Dunkle: The JP holds out court costs now.

Rep. Murphy explained HB 450 of which he is the sponsor. He stated that it doesn't change the basic water law. He has no objection to an amendment to strike out the Big Hole River.

Art Whitney of the Fisheries Division of the Fish and Game Department spoke in support of the bill. He stated that they cooperated with Rep. Murphy in this bill and it is a step in the right direction. Other streams should be added.

The following persons appeared as opponents to the bill:

Ev Darlinton, Director of the Montana Water Resources Board: Over 1/3 of all water produced in Montana is included in these streams covered by this bill.

John Baucus: The bill will stop all economic development of the streams. It should be amended to reserve a minimum flow for the streams mentioned.

Hubert White, president of Reichle-Jefferson-Whitehall Development Assn: This bill would stop the Reichle Project.

Wesley D'Ewart, representing the Farm Bureau: The Colorado River Basin Act prohibits the Secretary of Interior from making a diversion of water from the northwest for 10 years.

Mr. D'Ewart also stated that the Yellowstone River is the only river in the state with no major dam on it.

Keith Williams of Billings also appeared as an opponent.

Basil Andrikopoulos of the Montana Power Company also opposed the bill.

Rep. Schoonover: Are you endeavoring to establish priorities?
Murphy: Yes, for maintenance of minimum stream flow to protect fish habitat.

Rep. Schoonover: Does the Farm Bureau support Teichle Dam?
Mr. D'Ewart: Yes, they went on record last session as supporting it.

The witnesses were excused and Rep. Kvaalen moved that the committee vote DO NOT PASS ON HJR 34. Motion carried.

Rep. Ulmer moved that the committee vote do pass on HJR 30, and Rep. Schoonover made a substitute motion that the committee vote do pass on HJR 30. The substitute motion of DO PASS ON HJR 30 carried.

Rep. Johnston moved that the committee vote do not pass on HB 547 and Rep. Knudsen made a substitute motion that it do pass. The substitute motion failed and the committee carried the motion of DO NOT PASS ON HB 547.

Rep. Ulmer moved that the committee vote DO PASS AS AMENDED ON HB 336. Motion carried.

It was moved and carried that the committee pass HB 450 for the day.

The meeting was adjourned at 12:15.

Bill Williams
BILL WILLIAMS, Chairman

JCL

February 7, 1969

The meeting of the Fish and Game Committee was called to order at 10:35 a.m. by Chairman Bill Williams with 16 members present.

Rep. Schoonover, sponsor of HB 503, explained the bill. Mr. Orville Lewis of the Fish and Game Commission stated that part-time employment is used to administer the boat and water safety laws. Statewide programming and planning is needed to administer the laws.

Rep. Knudsen: How many problem areas do you have?
Rep. Schoonover: Anywhere there is a boat on water there are problems.

HJR 21 was explained to the committee by Rep. Knudsen, its sponsor. Winton Weydemeyer spoke in support of the bill.

Rep. Kvaalen: Do you mean you get the vegetation started growing and then flood it and then repeat the action every year?
Rep. Knudsen: It is only done once every three years. The water needs to at a 40° temperature to keep the plants alive.

HB 117 was brought before the committee. Mrs. Sylvia Casey, a member of the Canyon Ferry Recreation Association, spoke in support of the measure. They want the jurisdiction to stay in the Board of Equalization. The Fish and Game Department should be able to check these boats without any more money.

Vern Miller of the Board of Equalization stated that they worked on this bill with its sponsor, Rep. Zimmer.

Rep. Murphy explained HB 450 again to the committee and read a proposed amendment to the bill. The following persons appeared in opposition to the bill:

Hubert White of the Reichle-Jefferson Water Development Assn. He stated that the Bureau of Reclamation has all the rights to unappropriated water above Canyon Ferry.

Mark Etchart, chairman of the legislative committee of the Montana Water Development Assn. It would create a number of legal battles and would create chaos.

Peter Jackson. It would hinder water development.

Riley Childers, Montana Rural Electrics.. John Baucus.

Wesley D'Ewart, Farm Bureau. The Bureau of Reclamation has filed on the streams above Canyon Ferry. Rep. Murphy rebutted.

Rep. Ulmer moved that the committee adopt the amendments to HB 450 as proposed by Rep. Murphy and as amended do pass. Rep. Woodard made a substitute motion that HB 450 do not pass. The substitute motion failed. The original motion of DO PASS AS AMENDED ON HB 450 carried.

Rep. Knudsen moved that HB 503 do not pass. Rep. Schoonover made a substitute motion that HB 503 DO PASS. The substitute motion carried.

Rep. Knudsen moved that HB 117 do not pass. Rep. Johnston made a substitute motion that HB 117 DO PASS. The substitute motion carried.

Rep. Schoonover moved that HJR 21 DO PASS. Motion carried.

The meeting was adjourned at 12:20.

JCT.

Bill Williams
BILL WILLIAMS, Chairman

☐ DO NOT PASS
☐ BE CONCURRED IN
☐ BE NOT CONCURRED IN
☐ BE ADOPTED
☐ BE NOT ADOPTED

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Journal

MR. SPEAKER

We, your committee on FISH AND GAME

having had under consideration HOUSE Bill No. 450

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION 89-801, R.C.M. 1947, BY RESERVING ALL THE UNAPPROPRIATED WATER FROM CERTAIN ENUMERATED STREAMS FOR FISHING AND WILDLIFE PURPOSES EXCEPT FOR FUTURE APPROPRIATIONS FOR MUNICIPAL AND INDIVIDUAL WATER SUPPLIES."

Respectfully report as follows: That HOUSE Bill No. 450

BE AMENDED on page 1, lines 22 through 29 of the original bill by striking sub-section (2) in its entirety and inserting in lieu thereof the following words and number "(2) But the unappropriated waters of the streams and portions of streams hereafter named shall be subject to appropriation by the Fish and Game Commission of the State of Montana in such amounts only as may be necessary to maintain stream flows necessary for the preservation of fish and wildlife habitat. Such uses shall have a priority of right over other uses until the District Court in which lies the major portions of such stream or streams shall determine that such waters are needed for a use determined by said Court to be more beneficial to the public."

and FURTHER BE AMENDED on page 1, line 30 and page 2 lines 1 through 3 of the original bill by striking in its entirety subsection (a),

AND FURTHER BE AMENDED on page 2, line 4 of the original bill by striking the letter (b) and inserting in lieu thereof the letter (a)

DO PASS

AND FURTHER BE AMENDED on page 2, line 7 of the original bill by striking the letter (c) and inserting in lieu thereof the letter (b)

AND FURTHER BE AMENDED on page 2, line 10 of the original bill by striking the letter (d) and inserting in lieu thereof the letter (c)

AND FURTHER BE AMENDED on page 2, line 14 of the original bill by striking the letter (e) and inserting in lieu thereof the letter (d)

(continued on following page)

Bill Williams
Chairman.

Committee Report form
Revised 1968

FORM 19

☑ DO NOT PASS
☐ BE CONCURRED IN
☐ BE NOT CONCURRED IN
☐ BE ADOPTED
☐ BE NOT ADOPTED

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Journal

MR. SPEAKER

We, your committee on FISH AND GAME

having had under consideration HOUSE Bill No. 450

PAGE TWO

(continued)

AND FURTHER BE AMENDED on page 2, line 17 of the original bill by striking the letter (f) and inserting in lieu thereof the letter (e)

AND FURTHER BE AMENDED on page 2, line 21 of the original bill by striking the letter (g) and inserting in lieu thereof the letter (f)

AND FURTHER BE AMENDED on page 2, line 24 of the original bill by striking the letter (h) and inserting in lieu thereof the letter (g)

AND FURTHER BE AMENDED on page 2, line 27 of the original bill by striking the letter (i) and inserting in lieu thereof the letter (h)

AND FURTHER BE AMENDED on page 2, line 30 of the original bill by striking the letter (j) and inserting in lieu thereof the letter (i)

AND FURTHER BE AMENDED on page 3, line 3 of the original bill by striking the letter (k) and inserting in lieu thereof the letter (j)

AND FURTHER BE AMENDED on page 3, line 7 of the original bill by striking the letter (l) and inserting in lieu thereof the letter (k)

AND FURTHER BE AMENDED on page 3, line 10 of the original bill by striking the letter (m) and inserting in lieu thereof the letter (l)

AND AS SO AMENDED, DO PASS

Bill Williams Bill Williams
Chairman.

Committee Report form
Revised 1968

FORM 19

February 25, 1969

The Irrigation & Water committee met with Chairman McGowan presiding. The only bill to be considered was House Bill #450. The chief sponsor, Representative Murphy presented his bill to the committee stating that this bill gives the Fish & Game the right to a portion of certain streams and only at certain places. An amendment to the bill was offered by Rep. Murphy. Mr. Art Whitney of the Fish & Game Commission appeared as a proponent and left a prepared statement (see Exhibit A). Chairman McGowan presented an amendment to the committee.

HOUSE BILL NO 450 BE CONCURRED IN AS AMENDED motion by Senator Turnage, seconded by Senator Folsom. Motion carried.

Meeting adjourned.

McGowan

McGowan, Chairman

TESTIMONY IN SUPPORT OF HB-450 TO SENATE IRRIGATION AND WATER COMMITTEE

February 24, 1969 Exhibit A Arthur N. Whitney

I. Art Whitney, Fisheries Division Chief, Montana Fish and Game Department

A. Fortunate to work in best stream trout resource.

B. Resource must have water to survive in future.

C. Both HB-450 and SB-45 will help provide this.

1. SB-45 by recognizing our use as beneficial so we can logically participate in storage projects to maintain stream flows in any good trout water.

2. HB-450 by allowing us to appropriate some of the presently unused water in the very best trout streams.

D. Will confine remarks to HB-450 under consideration here. Just mention SB-45 so you know they are different. Don't kill HB-450 because you feel we may have SB-45 to do the job.

II. Concern of others over HB-450.

A. Will cloud title to certain waters because U.S. BuRec has it all. With method of filing spelled out for us in this bill, if there is any question we won't get an appropriation.

B. Will hurt farm family income by tying up water they may want to use sometime in the future.

Our appropriation subject to future court review. If expansion of irrigation more important in some areas in future, court will give them our appropriation.

III. What does HB-450 do?

A. Originally set out to recognize that Montana's top trout streams are important to her economy and we should continue to provide water flows for fish for the enjoyment of Montana anglers and for the benefit of our growing tourist industry.

B. As amended, it now allows - on a very short list of streams - Fish and wildlife interest to apply (by a method that should allow any opponents to be heard before appropriation is made) for a very junior water right -- which can be taken away the first time something better comes along. Really I am amazed that witnesses still appear against it.

C. As this bill's provisions have been restricted and weakened by amendments, I have wondered if it is really worth supporting any more. But then I look at what fish and wildlife interests have now and realize that it still represents a step forward.

IV. Recommend support.

A water right allowed on a portion of what remains after other interests have had a 100-year head start, with even that late priority subject to future court review, would probably seem pretty poor to a farmer or a steam power plant operator or a municipality. But to those of us that represent the fish and the fishermen it is at least a step in the right direction, and we'll take our chances with the future court reviews of priority. I urge a favorable committee report for this bill.

☐ DO PASS
☐ DO NOT PASS
☐ BE CONCURRED IN
☐ BE NOT CONCURRED IN AMENDED
☐ BE ADOPTED
☐ BE NOT ADOPTED

STANDING COMMITTEE REPORT

February 24, 1969

MR. PRESIDENT:

We, your committee on IRRIGATION AND WATER having had under consideration HOUSE Bill No. 450,

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION 89-831, R.C.M. 1947, TO RESERVE AND THE UNAPPROPRIATED WATER FROM CERTAIN DESIGNATED STREAMS FOR FISHING AND WILDLIFE PURPOSES SUBJECT TO FUTURE APPROPRIATIONS FOR MUNICIPAL AND INDIVIDUAL WATER SUPPLIES."

respectfully report as follows: That HOUSE Bill No. 450

Be Amended As Follows:

1. Page Section 1, subsection 2, page 2, line 3, of the original bill, being Section 1, subsection 2, page 2, line 17 of the printed bill, after the word and punctuation "public." by inserting the following material: "The unappropriated water of other streams and rivers not named herein may be set aside in the future for appropriation by the Fish & Game Commission upon consideration and recommendation of the Water Resources Board, Fish & Game Commission, State Soil Conservation Committee and the State Board of Health."

2. Page following Section 2 and beginning on line 21, page 3 of the original bill, being page 3, following Section 2 of the printed bill, by adding a new section to be numbered Section 3, to read as follows: "Section 3. The appropriation hereby authorized shall be made by filing a written notice of appropriation in the office of the county clerk and recorder of each county through which flows the river on which the appropriation is made, and by filing a copy of such notice with the Director of the Montana Water Resources Board. The notice shall state the quantity of water claimed, measured as provided in Title 89, Revised Codes of Montana, 1947, the purpose for which it is claimed, the name of the appropriator, and the date of appropriation."

As Amended Be Concurred In

not to interfere unduly with the hunting of waterfowl, but to provide havens in which they can rest, feed, and breed without molestation.

(21) After petition has been duly filed with the secretary of the commission, praying that an area shall be set aside as a game refuge or haven, the said secretary shall immediately publish a notice in a paper of general circulation in the county in which said area is proposed, that a hearing in connection therewith will be held at such place in said county as may be designated on a day not less than fifteen (15) days from the date of the first publication to be specified in said notice, at which time and place all interested parties shall have the right to appear and be heard.

(22) It shall have authority to establish and maintain an educational and biological department of their work for the collection and diffusion of such statistics and information as shall be germane to the purpose of this act.

(23) It shall not have authority to issue permits to anyone to carry firearms within the confines of the state of Montana, except to regularly appointed officers and/or fish and game wardens who are paid by the state of Montana.

(24) It shall have authority to declare certain fishing waters within the state of Montana closed to fishing by all persons, excepting therefrom that class of persons whose ages are twelve (12) years or less; it being the purpose of this section to provide suitable fishing waters for the exclusive use and enjoyment of juveniles of the age of twelve (12) years or less, at such times and in such areas as the state fish and game commission shall in its discretion deem advisable and consistent with its policies relating to fishing in the state of Montana.

(25) It shall have authority to promulgate and enforce rules and regulations governing uses of lands acquired, or held under easement, by the commission, or lands which it operates under agreement with or in conjunction with a federal or state agency or private owner. Such rules shall be promulgated in the interest of public health, public safety and protection of property in regulating the use of these lands. Provided further all

lease and easement agreements shall itemize uses as listed in subparagraph 13 of this section.

(26) It shall have authority to promulgate and enforce rules and regulations governing recreational uses of public fishing reservoirs and lakes constructed by the commission or on reservoirs and lakes which it operates under agreement with or in conjunction with a federal or state agency or private owner.

Such rules shall be promulgated in the interest of public health, public safety and protection of property in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, water skiing, surfboarding, picnicking, camping, sanitation and use of firearms on such reservoirs or at designated areas along the shore of such reservoirs. These rules shall be subject to review and approval by the state board of health as to public health and sanitation before becoming effective. Copies of such rules shall show such endorsement."

Approved: March 13, 1969.

CHAPTER NO. 345

An Act Amending Section 89-801, R.C.M. 1947, by Reserving All the Unappropriated Water From Certain Enumerated Streams for Fishing and Wildlife Purposes Except for Future Appropriations for Municipal and Individual Water Supplies.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 89-801, R.C.M. 1947, is amended to read as follows: Amending clause.

"89-801. **What waters may be appropriated.** *(1)* The right to the use of the unappropriated water of any river, stream, ravine, coulee, spring, lake, or other natural source of supply may be acquired by appropriation, and an appropriator may impound flood, seepage, and waste waters in a reservoir and thereby appropriate the same. What waters may be appropriated.

(2) But the unappropriated waters of the streams and portions of streams hereafter named shall be subject

to appropriation by the fish and game commission of the state of Montana in such amounts only as may be necessary to maintain stream flows necessary for the preservation of fish and wildlife habitat. Such uses shall have a priority of right over other uses until the district court in which lies the major portions of such stream or streams shall determine that such waters are needed for a use determined by said court to be more beneficial to the public. The unappropriated water of other streams and rivers not named herein may be set aside in the future for appropriation by the fish and game commission upon consideration and recommendation of the water resources board, fish and game commission, state soil conservation committee, the state board of health and approval of the legislature.

(a) Big Spring Creek in Fergus County from its mouth in T17N, R16E, Sec. 26 to the State Fish Hatchery in T14W, R19E, Sec. 5.

(b) Blackfoot River in Missoula and Powell Counties from its mouth in T13N, R18W, Sec. 21 to the mouth of its North Fork in T14N, R12W, Sec. 9.

(c) Flathead River in Flathead County from its mouth in T27N, R20W, Sec. 34 to the Canadian border in T37N, R22W, Sec. 4 & 5, including the section commonly known as the North Fork of the Flathead River.

(d) Gallatin River in Gallatin County from its mouth in T2N, R2E, Sec. 9 to the junction of its East Fork in T2N, R3E, Sec. 27.

(e) Gallatin River in Gallatin County (commonly called the West Gallatin) from the Beck & Border ditch intake in T2S, R2E, Sec. 14, to where it leaves the Yellowstone Park boundary in T9S, R5E, Sec. 18.

(f) Madison River in Madison & Gallatin Counties from its mouth in T2N, R2E, Sec. 17 to Hebgen Dam in T11S, R3E, Sec. 23.

(g) Missouri River in Lewis & Clark, Broadwater and Cascade Counties from its junction with the Smith River in T19N, R2E, Sec. 9 to Toston Dam in T4N, R3E, Sec. 7.

(h) Rock Creek in Granite and Missoula Counties from its mouth in T11N, R17W, Sec. 12 to the junction of its East and West Forks in T6N, R15W, Sec. 31.

(i) Smith River in Cascade and Meagher Counties from the mouth of Hound Creek in T17N, R3E, Sec. 20 to the Fort Logan Bridge in T11N, R5E, Sec. 31.

(j) Yellowstone River in Stillwater, Sweetgrass and Park Counties from the North-South Carbon-Stillwater County Lines in T3S, R21E, Sec. 10 to where it leaves the Yellowstone Park boundary in T9S, R8E, Sec. 23.

(k) Middle Fork Flathead River in Flathead County from its mouth in T31N, R19W, Sec. 7 to the mouth of Cow Creek in T27N, R12W, (a nonsectional township).

(l) South Fork Flathead River in Flathead and Powell Counties from its mouth at Hungry Horse Reservoir in T26W, R16W, Sec. (unknown), to its source at the junction of Danaher and Youngs Creeks in T20N, R13W, Sec. 36."

Rights heretofore established.

Section 2. Nothing herein contained shall in any way affect or diminish any rights to the use of the waters of such streams or portions of streams heretofore established nor any legal or statutory rights given in connection with such established uses.

Notice of appropriation.

Section 3. The appropriation hereby authorized shall be made by filing a written notice of appropriation in the office of the county clerk and recorder of each county through which flows the river on which the appropriation is made, and by filing a copy of such notice with the director of the Montana water resources board. The notice shall state the quantity of water claimed, measured as provided in Title 89, R.C.M. 1947, the purpose for which it is claimed, the name of the appropriator, and the date of appropriation.

Approved: March 13, 1969.

CHAPTER NO. 346

An Act to Raise the Annual Tax on Gross Earnings of Freight Line Companies to Five and One-Half Per Cent (5½%); Amending Sections 84-4819 and 84-4820, R.C.M. 1947; Providing an Effective Date.